

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

ORCHARD VILLAGE

Employer

and

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME) COUNCIL 31, AFL-CIO

Petitioner

Case 13-RC-20654

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.²

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:³

All regularly scheduled full time and part time employees, including Direct Support Professionals, Maintenance Workers, Housekeepers, Community Advocates, Respite Advocates, Specialized Service Instructors, and Program Manager Assistants employed by the Employer at its Chicago area facilities; but excluding all guards, professional, and supervisory employees as defined in the Act, managerial, clerical and confidential employees, including Bookkeepers, Case Managers, Human Resource Assistants, Human Resource Coordinators, Payroll Coordinators, Program Manager/QMRP's, Receptionists, RN-Trainers, Secretaries, Training Coordinators, Vocational Training Specialists, and Home Managers.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.⁴ Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at

the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) COUNCIL 31, AFL-CIO.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **September 27, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **October 4, 2001**.

DATED September 20, 2001 at Chicago, Illinois.

/s/ Elizabeth Kinney
Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The arguments advanced by the parties at the hearing have been carefully considered.

2/ The Employer is a corporation engaged in operating long term residential support and habilitative day care for people with developmental disabilities

3/ The unit found appropriate is in keeping with the parties stipulations. The parties stipulated that the “direct support professionals” included in the agreed upon unit are not professional employees within the meaning of Section 2(12) of the Act. Thus, there is no conflict or ambiguity between the inclusion of “direct support professionals” in the unit and the exclusion of “professionals” as defined in the Act covered by the unit descriptions exclusion of “professional” employees.

4/ At the hearing, the only issue raised by the parties was the manner in which the election should be conducted. The Petitioner takes the position that the election should be conducted by mail balloting. The Employer, on the other hand, takes the position that appropriate arrangements can be made for manual balloting. In support of its position, the Petitioner asserts that a manual election would disenfranchise a number of potential voters since it would be difficult and resource intensive to conduct a manual election in a unit of approximately 150 employees, working numerous different shift hours, and scattered among 22 sites. The Petitioner further asserts that most of the sites where the employees work are homes where developmentally disabled adults live, and that elections can not be conducted at those sites. The Employer asserts that a manual election is feasible, either at its main campus in Skokie, Illinois or at its main campus and two neutral locations. The Employer notes that no employee works more than 11 miles from its main campus, and that more than half of the unit voters work within three to four miles of the main campus. The Employer asserts that a majority of the unit voters come to the main campus to pick up their paychecks. Alternatively, the Employer has made arrangements for the use of two neutral sites, one in Oak Park, Illinois and one Des Plaines, Illinois which together with its main campus would make manual voting procedures available to unit employees without anyone having to travel more than three to four miles.

The time, place, and manner of conducting an election is an administrative matter left to the discretion of the undersigned to determine after having directed an election. *Odebrecht Contractors of Florida, Inc.*, 326 NLRB 33 (1998); *North American Plastics Corporation*, 326 NLRB 835 (1998). “The Board has held that a Regional Director has broad discretion in arranging the details of the election, including, in appropriate instances, determination as to whether to conduct the election in whole or in part by mail ballot” *Harold F. Gross d/b/a Southwestern Michigan Broadcasting Company*, 94 NLRB 30, 31 (1951). See also, *Halliburton Services*, 265 NLRB 1154 (1982).

Accordingly, after the issuance of the instant Decision and Direction of Election, the undersigned will administratively determine the manner of conducting the election, taking into consideration the positions of the parties and the guidelines of the Board as set forth in *San Diego Gas & Electric*, 325 NLRB 1143 (1998).